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MONTANA LEGISLATIVE HISTORY

Chapter 385 ~~19~~ 2003

Bill H 205 S _____ Original bill & history X C

H. Committee on	Business & Labor		S. Committee on	Public Health Welfare & Safety	
Hearing Date(s)	2/6	X C	Hearing Date(s)	3/24	X C
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		C			C
Date Out		C			

Did this bill originate in an interim committee? ____ Yes X No

Committee _____ Report _____

HOUSE BILL NO. 205

INTRODUCED BY E. FRANKLIN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MONTANA'S INSURANCE PRIVACY LAWS TO COMPLY WITH THE FEDERAL GRAMM-LEACH-BLILEY ACT AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; ALLOWING A LIMITED EXEMPTION FROM THE PRIVACY ACT FOR ENTITIES COVERED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 PRIVACY REGULATIONS; REQUIRING NATIONAL NOTICE FORMS TO REFER TO THE SPECIFIC MONTANA NOTICE FORM; AUTHORIZING DISCLOSURE OF CERTAIN NONMEDICAL INFORMATION TO A LIENHOLDER, MORTGAGEE, ASSIGNEE, OR LESSOR; AMENDING SECTIONS 33-19-104, 33-19-105, 33-19-202, 33-19-301, 33-19-306, AND 33-19-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-19-104, MCA, is amended to read:

"33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than

standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, fraud prevention, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, subrogation, grievance procedures, insurance transactions, ~~and~~ internal administration of compliance and policyholder service functions, and technical or professional services related to the provision of the functions described in this subsection.

(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation,

or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

(16) "Licensee" means:

(a) an insurance institution, insurance producer, or other person who is licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to this title; or

(b) a surplus lines insurer.

(17) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(18) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

(19) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(20) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(21) "Personal information" means any individually identifiable information gathered in connection with

an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(22) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(23) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

(24) "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

(25) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(26) "Separate, written authorization" means an individual's written authorization that is:

(a) given to the recipient of personal or privileged information that has been disclosed to the recipient pursuant to 33-19-306(3) through ~~(22)~~ (24); and

(b) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization.

(27) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(28) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 2. Section 33-19-105, MCA, is amended to read:

"33-19-105. Exemption based on federal ~~medical privacy rules~~ standards for privacy of individually identifiable health information -- notice to commissioner required. (1) ~~If a licensee is subject to and in compliance with a~~ Beginning on [the effective date of this act], the obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal ~~rule~~ regulations that ~~is~~ are part of the federal ~~health insurance portability and accountability privacy rules~~ Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, ~~and the federal rule with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter~~ standards for privacy of individually identifiable health information as to any use or disclosure of personal information that is covered under the HIPAA privacy regulations, except for the following provisions:

(a) Notices of insurance information practices described as notices of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) Reasons for adverse underwriting decisions must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including but not limited to additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

~~(2)~~(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why it is a HIPAA-covered entity. ~~The notice must include a statement of the reason for the claimed exemption.~~

(4) A licensee may claim an exemption only as to those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A third-party administrator that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activities of the third-party administrator that fall outside of the scope of that agreement are subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations as to the privacy policies and practices of any licensee, including those subject to the exemption provided in subsection (1).

(7) Beginning July 1, 2005:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (2)(a), the licensee shall give written notice to the commissioner of that exemption. The notice must include a statement of the reason for the claimed exemption."

Section 3. Section 33-19-202, MCA, is amended to read:

"33-19-202. Notice of insurance information practices -- delivery of notice. A licensee shall provide a clear and conspicuous notice of information practices that accurately reflects its privacy policies and practices to individuals about whom personal information is collected and disclosed by the licensee in connection with insurance transactions and insurance functions as follows:

(1) (a) Except as provided in subsection (2), in the case of a policyholder or certificate holder, a notice must be delivered by an insurance institution:

(i) in the case of policies issued after July 1, 2001, no later than at the time of the delivery of the insurance policy or certificate, unless the notice delivered to the policyholder or certificate holder pursuant to subsection (4)(a) when the policyholder or certificate holder was an applicant is still accurate;

(ii) at least annually, the 12-month period for which may be defined by the insurance institution and must be used consistently. The notice to certificate holders required in this subsection (1)(a)(ii) is not required if the

insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder.

(iii) in the case of a policy renewed after July 1, 2001, no later than the policy renewal date, except that notice is not required in connection with a policy renewal if:

~~(A) personal information is collected only from the policyholder or from public records; or~~

~~(B)~~ a notice meeting the requirements of this section has been given within the previous 12 months.

(b) When a policyholder or certificate holder obtains a new insurance product or service or when a policy is reinstated and any notices already provided are no longer accurate with respect to the new product, service, or reinstatement, a new or revised and accurate notice must be delivered to the policyholder or certificate holder no later than the time that the product or service is provided by the licensee or at the time of reinstatement~~, except that notice is not required if personal information is collected only from the policyholder or from public records~~.

(2) (a) An insurance institution is not required to meet the requirements of this section with respect to certificate holders until the insurance institution has personally identifiable information regarding the certificate holder.

(b) Until the notice requirements of subsection (1) are met, a third-party administrator or other agent or representative of an insurance institution may not disclose personal information, except as allowed in 33-19-306(2).

(3) The notice required in subsection (1) must be in writing and must state:

(a) the categories of personal information that may be collected from persons other than the individual or individuals covered;

(b) if a licensee discloses personal or privileged information to a third party without an authorization pursuant to an exception in 33-19-306 or 33-19-307, a separate description of the categories of information and the categories of third parties to whom the licensee discloses personal information;

(c) the categories of personal information about a former policyholder or certificate holder that the licensee discloses pursuant to 33-19-306 and 33-19-307 and the categories of persons to whom the disclosure may be made;

(d) any disclosure that the licensee makes pursuant to section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

(e) the licensee's policies and practices with respect to protecting the confidentiality and security of

personal and privileged information;

(f) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised;

(g) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons if the licensee collects, discloses, or uses information from an insurance-support organization; and

(h) that an individual is entitled to receive, upon written request to the licensee, a record of any subsequent disclosures of medical record information, as described in 33-19-301, made by the licensee pursuant to 33-19-306 ~~that must include:~~

~~(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;~~

~~(ii) the date of the receipt or examination; and~~

~~(iii) to the extent practicable, a description of the information disclosed~~ and 33-19-307.

(4) In the case of individuals who are not policyholders or certificate holders:

(a) except as provided in subsection (7), in the case of an applicant, an insurance institution shall provide a notice as described in subsection (3) when the applicant submits an application;

(b) for all other individuals, a notice must be given when a licensee seeks an authorization pursuant to 33-19-306(2) to make a disclosure that is not allowed by a disclosure exception provided for in 33-19-306(3) through (22) or 33-19-307. A notice given pursuant to this subsection (4)(b) may be in an abbreviated form and must state that:

(i) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(ii) the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(iii) a right of access and correction exists with respect to all personal information collected; and

(iv) the notice prescribed in subsection (3) must be furnished upon request. The abbreviated notice provided for in this subsection (4)(b) must explain a reasonable means by which an individual may obtain that notice.

(5) The obligations imposed by this section upon a licensee may be satisfied:

(a) by another licensee authorized to act on its behalf;

(b) by sending a notice to the primary policyholder of an individual policy or to the primary certificate holder.

(6) A licensee shall provide a notice required by this section so that an intended recipient can reasonably be expected to receive actual notice in writing or, if the intended recipient agrees, electronically, as follows:

(a) by hand-delivering a printed copy of the notice to the intended recipient;

(b) by mailing a printed copy of the notice to the last-known address of the individual separately or in a policy, billing, or other written communication; or

(c) for an individual who has agreed to conduct transactions electronically, as provided in applicable law, by posting the notice on the electronic site and requiring the individual to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(7) An insurance institution may provide the notice required in subsection (4)(a) telephonically if an application is submitted by telephone. A telephone notice under this subsection may be in abbreviated form as provided for in subsections (4)(b)(i) through (4)(b)(iv).

(8) ~~If a licensee is required to provide notice concerning privacy in addition to the notice required by this section, the~~ A licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, ~~a~~ any national notice ~~containing provisions specific to Montana~~ form must conspicuously refer to ~~any other~~ a state-specific notice form. The reference must indicate that state law controls privacy standards for residents of that state and that state law may be more protective of consumers than federal privacy law."

Section 4. Section 33-19-301, MCA, is amended to read:

"33-19-301. Access to recorded personal information. (1) If an individual, after proper identification, submits a written request to an insurance institution, insurance producer, or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, insurance producer, or insurance-support organization, the insurance institution, insurance producer, or insurance-support organization shall, within 30 business days from the date ~~such~~ that the request is received:

(a) inform the individual of the nature and substance of the recorded personal information in writing, by

telephone, or by other oral communication, whichever the insurance institution, insurance producer, or insurance-support organization prefers;

(b) permit the individual to see and copy, in person, the recorded personal information pertaining to ~~him~~ the individual or to obtain a copy of the recorded personal information by mail, whichever the individual prefers. If the recorded personal information is in coded form, an accurate translation in plain language must be provided in writing.

(c) except for the tracking of disclosures of medical record information that must be recorded and disclosed under subsection (2), disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, insurance producer, or insurance-support organization has disclosed the personal information within ~~2~~ 3 years prior to the request and, if the identity is not recorded, the names of those insurance institutions, insurance producers, insurance-support organizations, or other persons to whom ~~such~~ the information is normally disclosed; and

(d) provide the individual with a summary of the procedures ~~he~~ that the individual may use to request correction, amendment, or deletion of recorded personal information.

(2) (a) The insurance institution, insurance producer, or insurance-support organization shall provide to the individual a record of all disclosures of medical record information made by the insurance institution, insurance producer, or insurance-support organization, including disclosures made pursuant to 33-19-306 and 33-19-307, and except as specified in subsection (2)(b) of this section, the disclosures must include:

(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;

(ii) the date of the receipt or examination; and

(iii) to the extent practicable, a description of the information disclosed.

(b) Tracking is not required for the following types of medical record information disclosures:

(i) a disclosure authorized in 33-19-306 that is required for claims processing;

(ii) disclosures made to individuals about themselves;

(iii) a disclosure authorized in 33-19-306 that is required for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(iv) a disclosure authorized in 33-19-306 and made to law enforcement authorities.

~~(2)~~(3) Personal information provided pursuant to subsection (1) must identify the source of the information if ~~such~~ the source is an institutional source.

~~(3)~~(4) Medical record information supplied by a medical care institution or medical professional and requested under subsection (1), together with the identity of the medical professional or medical care institution that provided the information, ~~shall~~ must be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, insurance producer, or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, insurance producer, or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional. The medical professional may review and interpret the information and, at the request of the affected individual, shall consult with the affected individual.

~~(4)~~(5) Except for personal information provided under 33-19-303, an insurance institution, insurance producer, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

~~(5)~~(6) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (1), an insurance institution, insurance producer, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

~~(6)~~(7) The rights granted to individuals in this section extend to all natural persons to the extent information about them is collected, ~~and~~ maintained, and disclosed by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction or insurance function. The rights granted to all natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them, except for the tracking of medical record information as provided for in subsection (2).

~~(7)~~(8) For the purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency"."

Section 5. Section 33-19-306, MCA, is amended to read:

"33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, a licensee

may not disclose personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual. The authorization must be in the form provided in 33-19-206.

(3) Disclosure limited to that which is reasonably necessary may be made to a person to enable the person to provide information to the disclosing licensee for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.

(4) (a) Disclosure may be made between licensees if the information disclosed is limited to that which is reasonably necessary:

(i) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(ii) for either the disclosing or receiving licensee to perform its insurance function ~~in connection with an insurance transaction involving an individual~~.

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution, a medical professional, or the individual to whom the information pertains if that information is reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware;

(c) conducting an operations or services audit; or

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure:

(a) may be made to an insurance regulatory authority ~~that agrees not to further disclose the information without the individual's separate, written authorization~~;

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made by a licensee or an insurance-support organization to a law enforcement

or other government authority or to an insurance regulatory agency:

(a) to protect the interests of a licensee in preventing, investigating, or prosecuting the perpetration of fraud upon a licensee; or

(b) if the licensee or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies if:

(i) an individual is not identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed sale, transfer, merger, or consolidation of all or part of the business of the licensee or insurance-support organization if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to a licensee's affiliate as follows:

(i) to allow use of the information in connection with an audit of the licensee;

(ii) to enable a licensee to perform an insurance function; or

(iii) as allowed by 33-19-307.

(b) A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12) (a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by 33-19-307 is governed by that section.

(13) Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the information to the extent necessary to provide its services to its member or subscriber licensees and other insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.

(14) ~~Notwithstanding any other provision of this section, disclosure~~ Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the licensee's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. ~~Information~~ Medical record information disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder. Employer audits that are required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended, are not subject to the provisions of this subsection.

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal or privileged information in order to perform an insurance function and disclosure is not permitted under another exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

(a) using the information other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information other than to the licensee and as allowed in subsection (3).

(20) Disclosure may be made to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or insurance producer as having a legal interest in a policy of insurance if:

(a) medical record information is not disclosed;

(b) the information disclosed is limited to that which is reasonably necessary to permit the person with a legal interest in the policy to protect that person's interests in that policy; and

(c) the person receiving the information is notified that the person is prohibited from disclosing the information other than to the licensee and as allowed in subsection (3).

(21) Disclosure may be made to provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors, if the disclosure is limited to that which is reasonably necessary to enable the person or entity to perform services or an insurance function for the disclosing licensee and if the person or entity is notified by the licensee that the person or entity is prohibited from:

(a) using the information, other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information, other than to the licensee and as allowed in subsection (3).

~~(20)~~(22) Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be made only as allowed by 33-19-307.

~~(21)~~(23) Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

~~(22)~~(24) The commissioner may adopt rules creating additional exceptions to disclosure restrictions for the purpose of allowing a licensee or insurance-support organization to carry out a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

Section 6. Section 33-19-307, MCA, is amended to read:

"33-19-307. Personal information used for marketing purposes -- restrictions. (1) Except as permitted in this section, a licensee may not use or disclose personal information for a marketing purpose. For the purposes of this section, an insurance producer who describes to the producer's clients products or services available through the producer is not engaged in marketing.

(2) A licensee may use or disclose to another licensee personal information that is reasonably necessary to enable the licensee to market insurance products or services. A licensee may use or disclose to another licensee personal information, excluding medical record information, that is reasonably necessary to enable the licensee to market financial products and services. A licensee that receives personal information under this section from a disclosing licensee may not further disclose the information or use the information for any purpose other than marketing insurance and financial products and services.

(3) A licensee may disclose personal information that is reasonably necessary to enable an affiliate that is not a licensee to market insurance products and services. A licensee may disclose to an affiliate that is not a licensee personal information, excluding medical record information, that is reasonably necessary to enable the affiliate to market financial products and services. Disclosures under this subsection may be made only with a written agreement with the affiliate that the affiliate will not further disclose the information and will use it only for marketing insurance or financial products and services.

(4) A licensee may disclose personal information that is reasonably necessary to enable a person

contractually engaged to provide services for or on behalf of the licensee to market insurance or financial products or services if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement. A licensee shall adopt~~,~~ and maintain~~, and monitor~~ policies and procedures reasonably designed to ensure that third parties with whom the licensee contracts under this subsection comply with the requirements of this section.

(5) A licensee may use or disclose personal information for purposes other than those specified in subsections (2) and (3) only with an individual's ~~separate~~ written authorization as described in 33-19-306(2). In addition to meeting the requirements of 33-19-206, the authorization must:

(a) clearly and conspicuously state that the disclosed information is intended to be used for marketing purposes;

(b) specify each entity or type of entity to which the licensee intends to disclose the information;

(c) specify what information the licensee intends to disclose; and

(d) specify the type of marketing that the individual might receive pursuant to the disclosure."

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

- END -

Bill Draft Number: LC0475
Bill Type - Number: HB 205
Short Title: Comply with federal changes to insurance privacy laws
Primary Sponsor: Eve Franklin

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 49

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/18/2003			
(H) Signed by Governor	04/17/2003			
(H) Transmitted to Governor	04/09/2003			
(S) Signed by President	04/08/2003			
(H) Signed by Speaker	04/08/2003			
(H) Returned from Enrolling	04/08/2003			
(C) Sent to Printing	04/08/2003			
(H) Sent to Enrolling	04/07/2003			
(S) Returned to House	04/04/2003			
(S) 3rd Reading Concurred	04/04/2003	48	2	
(S) Scheduled for 3rd Reading	04/04/2003			
(S) 2nd Reading Concurred on Voice Vote	04/03/2003	49	0	
(S) Scheduled for 2nd Reading	04/03/2003			
(S) Committee Report--Bill Concurred	03/27/2003			(S) Public Health, Welfare and Safety
(S) Committee Executive Action--Bill Concurred	03/27/2003	7	0	(S) Public Health, Welfare and Safety
(S) Hearing	03/24/2003			(S) Public Health, Welfare and Safety
(S) Referred to Committee	03/07/2003			(S) Public Health, Welfare and Safety
(S) First Reading	03/07/2003			
(H) Transmitted to Senate	02/28/2003			
(H) 3rd Reading Passed	02/28/2003	92	5	
(H) Scheduled for 3rd Reading	02/28/2003			
(C) Sent to Printing	02/26/2003			
(H) 2nd Reading Passed as Amended	02/26/2003	95	3	
(H) 2nd Reading Motion to Amend Carried	02/26/2003	96	0	
(H) Scheduled for 2nd Reading	02/26/2003			
(C) Sent to Printing	02/25/2003			
(H) Committee Report--Bill Passed as	02/25/2003			(H) Business and Labor

Amended			
(H) Committee Executive Action--Bill Passed as Amended	02/24/2003	18	0 (H) Business and Labor
(H) Hearing	02/06/2003		(H) Business and Labor
(H) Fiscal Note Printed	01/10/2003		
(H) Hearing Canceled	01/09/2003		(H) Business and Labor
(H) Fiscal Note Received	01/08/2003		
(H) First Reading	01/06/2003		
(H) Referred to Committee	01/03/2003		(H) Business and Labor
(H) Fiscal Note Requested	01/02/2003		
(C) Introduced Bill Text Available Electronically	12/27/2002		
(H) Introduced	12/27/2002		
(C) Pre-Introduction Letter Sent	12/26/2002		
(C) Pre-Introduction Letter Sent	12/23/2002		
(C) Draft in Assembly/Executive Director Review	12/23/2002		
(C) Draft in Final Drafter Review	12/23/2002		
(C) Bill Draft Text Available Electronically	12/23/2002		
(C) Draft in Input/Proofing	12/23/2002		
(C) Draft to Drafter - Edit Review [CAJ]	12/23/2002		
(C) Draft in Edit	12/23/2002		
(C) Draft in Legal Review	12/19/2002		
(C) Draft to Requester for Review	12/06/2002		
(C) Draft On Hold	09/24/2002		
(C) Draft Request Received	09/05/2002		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Economic Affairs Interim Committee	
Drafter	McClure	Eddye
By Request Of	State Auditor	
Primary Sponsor	Franklin	Eve

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Insurance		Simple	INS

Privacy Simple PRIV

Additional Bill Information

Probable Fiscal Note: Yes
Preintroduction Required: Y
Session Law Ch. Number: 385
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
Sections 2 and 7	17-APR-03	
Sections 1 and 3-6	01-JAN-04	

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 6, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 205 (1/30/03); HB 472 (1/31/03); HB 494 (1/31/03)
Executive Action: HB 494 Do Pass

HEARING ON HB 205

Sponsor: **REP. EVE FRANKLIN, HD 42, Great Falls**

Opening Statement by Sponsor:

REP. FRANKLIN read the title of the bill: An act revising Montana's insurance privacy laws to comply with the federal Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act of 1996; allowing a limited exemption from the privacy act for entities covered by the Health Insurance Portability and Accountability Act of 1996 privacy regulations; requiring national notice forms to refer to the specific Montana notice form; authorizing disclosure of certain non-medical information to a lien holder mortgagee, assignee, or lessor.
{Tape: 1; Side: A; Approx. Time Counter: 10 - 54}

Proponents' Testimony:

Jill Gerdrun, Auditor's Office, explained the new changes in the bill, and provided testimony on the Auditor's Office view of the bill.
EXHIBIT(buh26a01)
{Tape: 1; Side: A; Approx. Time Counter: 54 - 344}

Tonya Ask, Blue Cross/Blue Shield of Montana, said this bill was an extremely complex bill and the issue of privacy and privacy protection is a very complex issue. She said she was only going to speak of the bill on the health insurance side. This bill deals with every type of insurance that any consumer in Montana may need. Health insurance is a big area and much of what Ms. Gerdrun discussed does refer to the health side. Blue Cross is currently regulated under the Insurance Privacy Protection Act in Montana. She indicated the federal government is to impose some administrative simplification and privacy protection. Much of the health information goes through electronic transmittal. The federal government now, with private carriers, has done retrofitting of the systems in order to make sure that information is protected as it goes from the hospital to the insurer so the patient may receive his claim payment. She also discussed the effective date.
{Tape: 1; Side: A; Approx. Time Counter: 344 - 411}

Frank Cote, Health Association of Montana, said he supports the bill and the testimony of Ms. Ask.
{Tape: 1; Side: A; Approx. Time Counter: 412 - 421}

Pat Melby, Montana Medical Association, said much of the medical information of health insurers is generated by the members and

the insured physicians. Physicians are complying with the standards. They support the portions of this bill intended to coordinate Montana law.
{Tape: 1; Side: A; Approx. Time Counter: 422 - 435}

Denise Pizzini, New West Health Services, Montana Benefits and Health Connections, said she concurs with the testimony of Ms. Ask. They are in the process of complying fully with the mandates related to privacy of health care information, and appreciate having to pay to comply with only one regulatory framework instead of two.
{Tape: 1; Side: A; Approx. Time Counter: 435 - 458}

Don Allen, Montana Association of Insurance Financial Advisors, said they agreed with the testimony of Ms. Ask.
{Tape: 1; Side: A; Approx. Time Counter: 459 - 490}

Greg Van Horssen, State Farm Insurance, said they agree that protections should be in place for this sensitive information. Information should be disclosed appropriately. He also said he stands as a conditional proponent. State Farm Insurance also carries some health insurance. This bill does not work across all lines of insurance. This bill creates significant impacts on the uniformity front. If someone agrees with disclosing of information, tracking shouldn't be done.
{Tape: 1; Side: A; Approx. Time Counter: 491 - Tape: 1; Side: B; Approx. Time Counter: 78}

Opponents' Testimony:

Jacqueline Lenmark, American Counsel of Life Insurers, American Insurance Association and **Alliance of American Insurers,** said these three associations represent life insurers and property casualty insurers. In associations, member companies write all three lines of insurance. She then presented amendments to the bill and explained them.
EXHIBIT(buh26a02)
{Tape: 1; Side: B; Approx. Time Counter: 79 - 441}

John Metropolus, Helena attorney, Farmers Insurance Group and **The National Association of Independent Insurers,** said they stand in limited opposition. He said the department did a good job in taking care of the concerns regarding health insurers.
{Tape: 1; Side: B; Approx. Time Counter: 442 - 479}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MATTHEWS asked Ms. Gerdrun to explain the notice form. **Ms. Gerdrun** stated that the national notice does not necessarily refer to Montana specifically. If they have a separate state notice, they must refer to a state-specific notice form. The reference must indicate that state law controls privacy standards for residents of that state. That state law may be more protective.
{Tape: 1; Side: B; Approx. Time Counter: 479 - Tape: 2; Side A; Approx. Time Counter: 47}

Closing By Sponsor:

The sponsor closed.
{Tape: 2; Side: A; Approx. Time Counter: 48 - 99}

HEARING ON HB 472

Sponsor: REP. JIM KEANE, HD 36, Butte

Opening Statement by Sponsor:

REP. KEANE said this bill started two years ago when they were asked to step up and visit a high school and educate the younger people about the legislative process. He indicated he was one of the people signing up for the task. Last September, Legislative Services provided the students with information, and attended the class at the high school. Rep. Keane decided he would probably learn more by experiencing the project. He called the teacher and asked if the students might be interested in proposing some legislation. The teacher went back to the high school and he and the students wrote up four bills and submitted them to Rep. Keane. Of the four bills, this one would have had the least economic impact on the state. The bill presented today is the bill proposed by the students of Butte High School. They provided the language and contacted the person in Legislative Services who drafted the bill.
{Tape: 2; Side: A; Approx. Time Counter: 107 - 135}

Proponents' Testimony:

Pete Patterson, Butte High School, said the economic situation of Montana is not perfect. Many times Montanans need to entice companies to come to their counties. They must attract them by giving them tax breaks and other incentives. When these tax breaks run out, many times the companies leave and their employees are unemployed. This bill allows for the unemployed

EXHIBIT 1
DATE 2-6-03
HB 205

STATE AUDITOR'S OFFICE
Privacy
HB 205
Rep. Eve Franklin

Background
The 2001 Legislature amended the Insurance Information and Privacy Protection Act to comply with federal privacy requirements found in the Gramm-Leach-Bliley Act [GLBA]. The 2001 amendments preserved and strengthened Montana's existing privacy requirements, thereby maintaining stronger consumer privacy protections than federal law requires. Montana's Insurance Information and Privacy Protection Act applies only to entities licensed by the Montana Insurance Department. Montana law differs from GLBA in that GLBA allows insurance companies to share nearly all of an individual's personal financial information, unless the individual specifically requests that it not be shared.

Purpose
This bill corrects technical errors in the law and makes it more workable for companies.

Details

- In April 2003, the federal Health Insurance Portability and Accountability Act (HIPAA) will go into effect. HB 205 creates an exemption in Montana law for health insurance companies that are required to comply with HIPAA. HIPAA privacy requirements are extensive, and, in some cases, more protective than Montana law. Because compliance with both federal and state law would be complex and costly for health insurers, we have exempted them from Montana law, except in instances where Montana law is more protective of consumers.

- A sunset provision for the exemption is included in HB 205, allowing this agency to make certain that federal privacy regulations are enforced, that federal regulators are responsive to consumer complaints and that the health information of Montana consumers is fully protected.

- HB 205 makes it clear that if an insurance company uses more than one notice form, any national notice form must conspicuously refer to the state-specific notice form and indicate that the state law will prevail and may be more protective.

- This bill makes the tracking requirement for medical record disclosures more workable for industry.

- HB 205 allows companies to disclose information more freely for the purposes of fraud prevention and detection.

EXHIBIT 2
DATE 2-6-03
HB 205

INDUSTRY AMENDMENTS to HB 205
Requested by American Council of Life Insurers,
American Insurance Association, Alliance of American Insurers
Prepared by Jacqueline T. Lenmark
February 6, 2003

1. **Insurance Function**

Page 3, line 17, before "technical," insert:

"administrative, business,"

Page 3, line 18, delete:

"related to the provision of the functions described in this subsection."

Rationale—assures companies have the ability to run their businesses as well as conduct activities relating to insurance transactions. (E.g. issue 1099's, demutualize).

2. **Separate, Written Authorization**

Page 5, line 24, delete "given to" and insert:

"obtained by"

Page 5, line 25, delete "(3) through (24)" and insert:

"(10), (11), (14), (15) and (17)"

Rationale – clarifies that separate, written authorization is not required for business exceptions but rather only in those instances where disclosure beyond the exception is allowed with a separate, written authorization.

3. **Notice**

Page 7, line 23, delete:

"and insurance functions"

Rationale -- insurance functions are all allowed business exceptions which consumers expect us to do to service their products and run our businesses. Inclusion unnecessarily broadens existing policy and thus, goes beyond our agreement with the DOI to support existing policy and only offer amendments to make that policy operationally feasible.

Page 9, line 2, insert after (f):

"the following information must be contained in the initial notice delivered at the time of application and in any subsequent annual notice if the policy renews periodically;

(I)"

Page 9, line 4, delete (g) and insert:

"(ii)"

Page 9, line 7, delete (h) and insert:

"(iii)"

Page 10, line19, delete everything after "must" through line 21 and insert:

"give policyholders clear and conspicuous notice that when state law is more protective of consumers than federal privacy law, the licensee will protect information in accordance with state law."

Subsection (8) would then read:

"A licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, any national notice form must give policyholders clear and conspicuous notice that when state law is more protective of consumers than federal privacy law, the licensee will protect information in accordance with state law."

Rationale – allows companies to give policyholders meaningful notice of their privacy practices and the consumer's specific rights inherent in both the underwriting process and also during the life of the policy. Although most model act states considered combining the underwriting and Gramm Leach Bliley notices into a single notice, all states but Montana ultimately concluded that separating the elements of both notices was the only possible approach to fully inform consumers of company practices and the consumer's essential rights specific to the underwriting process and those applicable throughout the life of a policy. Additionally, we believe notices must accurately reflect the specific privacy practices of the insurer and not recite state law so that consumers may understand the practices of each company and do business with companies whose practices reflect their individual preferences.

4. <u>Tracking Medical Information</u>

Page 11, line 10, delete "3" and insert:

"2"

Page 11, line 15, delete after "(a) T" and insert:

"If an individual, after proper identification, submits a written request to an insurance institution, insurance producer, or insurance-support organization for a record of all disclosures of medical record information, t"

Page 11, line 17, insert after 33-19-306:

"(9) other than disclosures made to law enforcement authorities, (10)(b), (12)(a)(iii), (15) and (22)"

Page 11, line 18, delete everything after 33-19-307 and insert:

"the recorded information must include:"

Page 11, lines 23-28, delete.

Page 12, line 22, delete:

"or insurance function"

Rationale: The amendments afford compliance officers greater clarity regarding the tracking of medical information by affirmatively stating when tracking is required. The DOI's objective to approach tracking similar to HIPAA is well intended; however, we have great concern that just listing variables would make tracking subjective and unintentionally create inconsistent implementation by the industry. The amendments merely apply the DOI's version of Section 301(2)(b) to the disclosures in Section 306, thereby allowing us to identify a uniform list of disclosures that require tracking. The only additional element we added was an "insurance function" exception that is similar to what HIPAA allows and typically does not involve "specific disclosures about a person" but rather enables us to run our businesses. DOI's change to require tracking for 3 years and extending these rights to "insurance function" substantially and unnecessarily broadens existing policy and thus, goes beyond our agreement to support existing policy and only offer amendments to make that policy operationally feasible.

5. **Disclosure Exceptions**

Page 16, line 20, insert at the end of the line:

"and"

Page 16, line 22, delete "; and" and insert:

"."

Page 16, lines 23 and 24, delete both lines.

Page 16, lines 29 and 30, delete everything after "disclosing licensee" and insert:

"."

Page 17, lines 1-3, delete completely.

Rationale – companies have no authority over the persons or entities receiving information and do not have contracts with these individuals and entities and thus, should not be placed in the position of having to essentially provide legal advise to these individuals or entities of their Montana privacy obligations.

6. **Miscellaneous**

Page 8, line 22 and Page 16, line 9, delete:

"privileged"

Page 9, line 6, Page 17, lines 15, 18, 19 & 22 and Page 18, line 6 delete:

"uses"

Page 17, line 14, delete "used" and insert:

"disclosed"

Page 18, line 7, insert after (3):

", and (4)"

7. **Effective Date**

Amend to read:

"(1) Section ~~1~~ 2 and this section are effective on passage and approval.

(2) Sections ~~2~~ 1 and 3 through 6 are effective on January 1, 2004 and apply to policies issued or renewed on or after January 1, 2004."

Rationale - health insurers need an immediate effective date to comply with HIPAA. Other lines of insurance require time to redraft and reprint forms and notices and to create new systems required by other amendments in the Act.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 2-6-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date 2-6-03

Bill No. HB 205 Sponsor(s)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Pat Melby	Mt Med Ass'n	✓		
Gloria Leonard-Rom	Surgery Centers	✓		
Denise Pizzini	New West	✓		
Joe Mazurek	BCBSMT	✓		
Greg Van Horssen	State Farm Ins. Co.	✓ w/ amdts		
Frank Cote	HCIAA	✓		
Don Allen	MTAIFA	✓ (w/ amdt)		
Peggy McCleod	ITAM	✓ amend		
[illegible]	FIG/NAII		✗	
Tanya Ask	BCBSMT	✓		
Jacqueline Denmark	AIA; ACLI		✓	
Sue Weingartner/NWT	Alliance Am Ins		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 24, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: Rep. Kathleen Galvin-Halcro (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 656 (2/17/03); HB 672 (2/17/03); HB 675(2/17/03); HB 688 (2/22/03)

Executive Action: HB 656 Do Pass; HB 205 Do Pass As Amended; HB 675 Do Pass; HB 564 Do Pass As Amended; HB 588 Do Pass As Amended

Testimony which arrived late for the Committee was entered in by **Daniel R. Erving, Daniel R. Erving Agency, Helena,** for HB 732. **EXHIBIT(buh41a01)**

HEARING ON HB 675

Sponsor: REP. CAROL C. JUNEAU, HD 85, Browning

Opening Statement by Sponsor:

REP. JUNEAU said this bill prohibits a grocery store or supermarket from selling or distributing a customer list based on customers having member discount cards. They would not be permitted to distribute the list unless the customer consents in writing to being placed on the list. She then provided club card samples.
EXHIBIT(buh41a02)
{Tape: 1; Side: A; Approx. Time Counter: 33 - 78}

Proponents' Testimony:

Beth Brenneman, Legal Director, Montana ACLU, said that the ability to compile vast amounts of information electronically about any individual is wrong. The large grocery chains are being asked, and some have given information to the F.B.I., to construct profiles of individuals. This depends on what they buy at grocery stores. This information is very important, and an individual should have of control over where that information goes.
{Tape: 1; Side: A; Approx. Time Counter: 78 - 122}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MENDENHALL asked REP. JUNEAU if there were statistics on any abuse of these discount cards. She said, "No."
{Tape: 1; Side: A; Approx. Time Counter: 140 - 165}

Closing by Sponsor:

The sponsor closed.
{Tape: 3; Side: A; Approx. Time Counter: 38 - 40}

EXECUTIVE ACTION ON HB 656

{Tape: 3; Side: A; Approx. Time Counter: 38 - 500}

Motion/Vote: REP. BITNEY moved that HB 656 DO PASS. Motion carried 18-0.

Motion/Vote: REP. BITNEY moved HB 656 BE PLACED ON THE CONSENT CALENDAR. Motion carried 18-0.

EXECUTIVE ACTION ON HB 205

Motion: REP. ROME moved that HB 205 DO PASS.

Motion: REP. ROME moved that HB 205 BE AMENDED. EXHIBIT(buh41a15)

Discussion:

REP. ROME explained the results of the subcommittee on this bill and the amendments.

Mr. Campbell also explained the amendments.

Betsy Griffing, Chief Counsel, State Auditor's Office, explained the amendments.

Jill Gerdrun, State Auditor's Office, explained the amendments.

Vote: Motion carried 18-0.

Motion/Vote: REP. ROME moved that HB 205 DO PASS AS AMENDED. Motion carried 18-0.

EXECUTIVE ACTION ON HB 675

Motion: REP. KEANE moved that HB 675 DO PASS.

EXHIBIT 15
DATE 2-24-03
HB 205

Amendments to House Bill No. 205
1st Reading Copy

For the House Business and Labor Committee

Prepared by Bartley Campbell
February 24, 2003 (10:09am)

1. Title, line 10.
Following: "MONTANA"
Insert: "STATE"

2. Title, line 12 through line 13.
Strike: "AN" on line 12 through "DATE" on line 13
Insert: "EFFECTIVE DATES AND AN APPLICABILITY DATE"

3. Page 3, line 17.
Following: "technical"
Insert: ", administrative,"

4. Page 5, line 24.
Strike: "given to"
Insert: "obtained by"

5. Page 5, line 25.
Strike: "33-19-306(3) through ~~(22)~~ (24)"
Insert: "33-19-306(10), (11), (14), (15), and (17)"

6. Page 6, line 25.
Strike: "but not limited to"

7. Page 7, line 7.
Following: "examinations"
Insert: "of the licensee"

8. Page 7, line 8 through line 9.
Strike: "of any" on line 8 through "(1)" on line 9
Insert: "that are subject to state privacy laws"

9. Page 7, line 16.
Strike: "(2)(a)"
Insert: "(7)(a)"
Following: "exemption"
Insert: ", unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations"

10. Page 7, line 23.
Strike: "and insurance functions"

11. Page 7, line 28.
Strike: "(4)(a)"
Insert: "(5)(a)"

12. Page 8, line 29.
Following: ";"
Insert: "and"

13. Page 9, line 1.
Strike: ";"
Insert: "."

14. Page 9, following line 1.
Insert: "(4) The following information must be contained in the initial notice delivered at the time of application and in any subsequent annual notice if the policy renews periodically:"
Renumber: subsequent subsections

15. Page 9, line 2.
Strike: "(f)"
Insert: "(a)"
Renumber: subsequent subsections

16. Page 9, line 5.
Strike: ", discloses,"

17. Page 9, line 6.
Following: "from"
Insert: "or discloses personal information to"

18. Page 9, line 9.
Strike: "(7)"
Insert: "(8)"

19. Page 9, line 19.
Strike: "(22)"
Insert: "(24)"
Strike: "(4)(b)"
Insert: "(5)(b)"

20. Page 9, line 28.
Strike: "(4)(b)"
Insert: "(5)(b)"

21. Page 10, line 13.
Strike: "(4)(a)"
Insert: "(5)(a)"

22. Page 10, line 15.
Strike: "(4)(b)(i) through (4)(b)(iv)"
Insert: "(5)(b)(i) through (5)(b)(iv)"

23. Page 10, line 18 through line 21.
Following: "used,"
Strike: "any national" on line 18 through "law" on line 21
Insert: "the licensee shall refer the individual to state specific notice forms that may be used. Any national notice form must give individuals clear and conspicuous notice that when state law is more protective of individuals than federal privacy law, the licensee will protect information in accordance with state law"

24. Page 11, line 10.
Strike: "3"
Insert: "2"

25. Page 11, line 15.
Strike: "The" through "organization"
Insert: "If an individual, after proper identification, submits a written request to a licensee for a record of disclosures of medical record information, the licensee"

26. Page 11, line 16 through line 17.
Strike: "insurance" on line 16 through "made" on line 17
Insert: "licensee"

27. Page 11, line 17.
Following: "33-19-306"
Insert: "(8) or (9), other than disclosures made to law enforcement authorities, to 33-19-306(10)(b), (12)(a)(ii), (13) or (14), only as to medical record information that has been identified, to 33-19-306(15) or (21), only as to medical information that has not been identified, and to 33-19-306(22)"

28. Page 11, line 18.
Strike: ", and except as specified in subsection (2)(b) of this section, the"
Insert: ". The record of those"

29. Page 11, line 20.
Strike: "3"
Insert: "2"

30. Page 11, line 23 through line 28.
Strike: "Tracking" on line 23 through "authorities" on line 28
Insert: "If an individual submits a written request to a licensee for a record of disclosures of medical record information and the licensee may have made medical record information disclosures pursuant to 33-19-306(4)(b),(5),(11),(12)(a)(i),(12)(a)(ii),(12)(b),(16),(18), or (19), the licensee must provide the individual with a description of the types of medical record information that the licensee may disclose under those exceptions, along with a general description of the usual recipients of that information. Individual tracking of each disclosure of medical record information is not required"

31. Page 12, line 22.
Strike: "or insurance function"

32. Page 16, line 20.
Following: "disclosed;"
Insert: "and"

33. Page 16, line 22 through line 24.
Strike: "; and" on line 22 through "(3)" on line 24

34. Page 16, line 30.
Strike: ":"

35. Page 17, line 1.
Strike: "(a)"

36. Page 17, line 2 through line 3.
Strike: "; and" on line 2 through "(3)" on line 3

37. Page 18, line 7.
Following: "(2)"
Strike: "and (3)"

Insert: "through (4)"

38. Page 18, line 15.
Strike: "**date**"
Insert: "dates -- applicability"
Strike: "[This act] is"
Insert: "(1) [Section 2] and this section are"

39. Page 18, following line 15.
Insert: "(2) [Sections 1 and 3 through 6] are effective January 1, 2004, and apply to policies issued or renewed on or after January 1, 2004."

- END -

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO			✓
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 205** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Joe McKenney, Chair

And, that such amendments read:

1. Title, line 10.
Following: "MONTANA"
Insert: "STATE"

2. Title, line 12 through line 13.
Strike: "AN" on line 12 through "DATE" on line 13
Insert: "EFFECTIVE DATES AND AN APPLICABILITY DATE"

3. Page 3, line 17.
Following: "technical"
Insert: ", administrative,"

4. Page 5, line 24.
Strike: "given to"
Insert: "obtained by"

5. Page 5, line 25.
Strike: "33-19-306(3) through ~~(22)~~ (24)"
Insert: "33-19-306(10), (11), (14), (15), and (17)"

6. Page 6, line 25.
Strike: "but not limited to"

Committee Vote:
Yes 18, No 0.

411316SC.hhn

2-24-03

7. Page 7, line 7.
Following: "examinations"
Insert: "of the licensee"

8. Page 7, line 8 through line 9.
Strike: "of any" on line 8 through "(1)" on line 9
Insert: "that are subject to state privacy laws"

9. Page 7, line 16.
Strike: "(2)(a)"
Insert: "(7)(a)"
Following: "exemption"
Insert: ", unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations"

10. Page 7, line 23.
Strike: "and insurance functions"

11. Page 7, line 28.
Strike: "(4)(a)"
Insert: "(5)(a)"

12. Page 8, line 29.
Following: ";"
Insert: "and"

13. Page 9, line 1.
Strike: ";"
Insert: "."

14. Page 9, following line 1.
Insert: "(4) The following information must be contained in the initial notice delivered at the time of application and in any subsequent annual notice if the policy renews periodically:"
Renumber: subsequent subsections

15. Page 9, line 2.
Strike: "(f)"
Insert: "(a)"
Renumber: subsequent subsections

16. Page 9, line 5.
Strike: ", discloses,"

17. Page 9, line 6.
Following: "from"
Insert: "or discloses personal information to"

18. Page 9, line 9.
Strike: "(7)"
Insert: "(8)"

19. Page 9, line 19.
Strike: "(22)"
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Strike: "(4)(b)"
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21. Page 10, line 13.
Strike: "(4)(a)"
Insert: "(5)(a)"

22. Page 10, line 15.
Strike: "(4)(b)(i) through (4)(b)(iv)"
Insert: "(5)(b)(i) through (5)(b)(iv)"

23. Page 10, line 18 through line 21.
Following: "used,"
Strike: "any national" on line 18 through "law" on line 21
Insert: "the licensee shall refer the individual to state specific notice forms that may be used. Any national notice form must give individuals clear and conspicuous notice that when state law is more protective of individuals than federal privacy law, the licensee will protect information in accordance with state law"

24. Page 11, line 10.

Strike: "3"
Insert: "2"

25. Page 11, line 15.
Strike: "The" through "organization"
Insert: "If an individual, after proper identification, submits a written request to a licensee for a record of disclosures of medical record information, the licensee"

26. Page 11, line 16 through line 17.
Strike: "insurance" on line 16 through "made" on line 17
Insert: "licensee"

27. Page 11, line 17.
Following: "33-19-306"
Insert: "(8) or (9), other than disclosures made to law enforcement authorities, to 33-19-306(10)(b), (12)(a)(ii), (13) or (14), only as to medical record information that has been identified, to 33-19-306(15) or (21), only as to medical information that has not been identified, and to 33-19-306(22)"

28. Page 11, line 18.
Strike: ", and except as specified in subsection (2)(b) of this section, the"
Insert: ". The record of those"

29. Page 11, line 20.
Strike: "3"
Insert: "2"

30. Page 11, line 23 through line 28.
Strike: "Tracking" on line 23 through "authorities" on line 28
Insert: "If an individual submits a written request to a licensee for a record of disclosures of medical record information and the licensee may have made medical record information disclosures pursuant to 33-19-306(4)(b),(5),(11),(12)(a)(i), (12)(a)(ii),(12)(b),(16),(18), or (19), the licensee must provide the individual with a description of the types of medical record information that the licensee may disclose under those exceptions, along with a general description of the usual recipients of that information. Individual tracking of each disclosure of medical record information is not required"

31. Page 12, line 22.
Strike: "or insurance function"

32. Page 16, line 20.
Following: "disclosed;"
Insert: "and"

33. Page 16, line 22 through line 24.
Strike: "; and" on line 22 through "(3)" on line 24

34. Page 16, line 30.
Strike: ":"

35. Page 17, line 1.
Strike: "(a)"

36. Page 17, line 2 through line 3.
Strike: "; and" on line 2 through "(3)" on line 3

37. Page 18, line 7.
Following: "(2)"
Strike: "and (3)"
Insert: "through (4)"

38. Page 18, line 15.
Strike: "date"
Insert: "dates -- applicability"
Strike: "[This act] is"
Insert: "(1) [Section 2] and this section are"

39. Page 18, following line 15.
Insert: "(2) [Sections 1 and 3 through 6] are effective January 1, 2004, and apply to policies issued or renewed on or after January 1, 2004."

- END -

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 24, 2003 at 3:38 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 695, 3/10/2003; HB 205, 3/10/2003; HB 384, 3/10/2003
Executive Action:

HEARING ON HB 205

Sponsor: REP. EVE FRANKLIN, HD 42, Great Falls

Proponents: Jill Gerdrum, State Auditor's Office
Tanya Ask, Blue Cross Blue Shield of Montana
Denise Pizzini, New West Health Services, MT Health Connection
Jacqueline Lenmark, American Insurance Association, American Council for Life Insurance

Opponents: None.

Opening Statement by Sponsor:

REP. EVE FRANKLIN, HD 42, Great Falls, read and submitted her written opening testimony. EXHIBIT(phs62a04)

Proponents' Testimony:

Jill Gerdrum, State Auditor's Office, said Montana had in place a privacy act regarding insurance since 1982 because of the nature of the kind of information required to be given out in the process of the insurance business. In 1999 the act that was in place since 1982 underwent some changes and there were some concerns with that. It came back in 2001 and addressed some concerns and in 2001 brought everyone into compliance with the Gramm-Leach-Bliley Act (GLBA). The Montana Privacy Act was more protected than the federal GLBA and a direct policy decision was made last session to keep those protections in place because of all of the important information, including financial information. Medical information was mentioned but as companies were doing more business in securities and insurance passing over, financial information was also shared with the insurance company and could sometimes be shown to other entities, so they kept in place some important protections that were above those that the federal government put in place when they did electronic filing. HB 205 tweaked that because the insurance industry came to them after the 2000 session and said they had concerns with being able to work through and comply with the act as they were trying to comply with other acts in all the other states. They started through a process of weighing those industry concerns of being able to comply against consumer privacy that they thought was their duty to protect. She said most of what was done in the bill were industry requests to make it easier for them to comply and she believed they had worked out all the disagreements in the House. Section 1 is just the definition Section. A couple of changes were requested by the industry on Page 3, Line 17-18, the

definition of insurance function was used throughout the Act and was really central to it and the industry wanted to be sure that fraud prevention was a part of that definition. They agreed to that. They also asked for a little more broadening of that in that it was technical and administrative type of service. The other change in definitions was on Page 5, Lines 24 and 25, more clarification for the industry. Section 2 was the bulk of the bill. Main components of HB 205 and what Section 2 did was beyond the Gramm-Leach-Bliley Act. The federal government passed HIPPA. The health insurers were now in the process of trying to comply with HIPPA and because it was very different from the GLBA, it was very expensive for them to comply with and sometimes it was more protective. So, Section 2 was allowed those entities and they were mainly health insurers who were subject to the HIPPA privacy rules to have an exemption to the Montana law so they were not trying to comply with two very different things. A Sunset provision was put on that so that they could reexamine it after the federal government had the opportunity to try to regulate privacy for health insurers and make sure they were protecting consumer privacy. Section 3 was the section that required the insurers to provide notice and that was on Pages 7-10. One of the main changes last time was to require consumers to sign an authorization form when they went to purchase their insurance. It said they were authorized to collect and show, which was a problem so they got rid of that in 2001 but had to replace that and to comply with Gramm-Leach-Bliley they had to require further significant notices so that when the consumer purchased the insurance they no longer had to sign some authorizations. The consumers did however, have to be told what kind of information could be collected and shown without their authorization. Section 3 was somewhat minor to that, where the department requested cleanup changes. On Page 10 in Subsection 9 was the real substitute change where they believed there was a mistake in the last law. They allowed companies to use two notices if they had a national and state form. They thought that if they had an agreement last time and used two forms, the National form, which was much less protected usually, referred to the state form so that consumers were pointed to the form that was usually more relevant to their privacy rights. She said they came to some consensus language on that which was found in Subsection 9: that companies were required to refer to a state specific form if they used two forms. Section 4 was the section of Privacy Act that dealt with the consumers right to access and manage their personal information and to receive information about medical records that had been disclosed about them. They moved the medical record information into the section. At the request of the industry, they made it more clear and precise of what types of medical record disclosures were needed to be individually tracked so when the consumer called the insurer and

asked who their medical information was given to, there were certain kinds of disclosures they would need to have. Section 5 started on Page 13 and these were mostly industry changes. It was Section 33-19-306 of the Privacy Act and it went through the disclosures allowed without an authorization so that the company could do without getting separate copies to consumers. She pointed out a few things on Page 17, Subsection 20, Line 4 and Subsection 21, Line 12. Those were requested by the industry as additional disclosure exceptions they felt were necessary to be able to do in their everyday business. Section 20 allowed them to disclose information to lien holders and mortgage use if they had an interest in the policy. Section 21 allowed them to disclose guaranteed funds. A guaranteed fund was really going to only come into place if a company in liquidation could tell all their policy holders that they did have to disclose the information to the guaranteed fund. There were other entities in the bill such as attorneys, accountants, and auditors whose disclosures needed to be tracked and they made the concession to the industry after careful consideration of the language. They were two extra disclosures allowed in 306. Section 6 was the marketing section. Some things were allowed to use in marketing insurance and financial products limited and there was not much change to that except on Page 18, Line 21 where the word monitor of request of industry was stricken because what they asked them to do was

{Tape: 3; Side: A}

not in the their line of business to monitor other third parties. The last section was the effective date and there was an amendment in the House done after some negotiating to make the section that gave the health insurers the exemption effective date immediately but made the rest of the sections effective later.

Tanya Ask, Blue Cross Blue Shield of Montana said **Frank Cody** who represented the **Health Insurance Association of America** wanted her to also add his concurrence with her testimony. She said they strongly supported the legislation. The Health Insurance Portability and Accountability Act or HIPPA regulation that was going to go into effect in a few weeks was a massive undertaking for most health carriers around the United States and particularly for those in the state of Montana. The exemption for HIPPA compliance was extremely important for those who did write health insurance and the immediate effective date given that the HIPPA rates were going to become effective April 14th were extremely important as well.

Denise Pizzini, New West Health Services, MT Health Connection, said she concurred with **Ms. Ask's** testimony. She said they were two health carriers and they strongly supported the bill. They needed the exemption for HIPPA compliance.

Jacqueline Lenmark, American Council of Life Insurers, American Insurance Association, American Council for Life Insurance, said they were a trade association of property and casualty insurers. She said she was also speaking for a few others: **Sue Weingartner, Alliance of American Insurers,** another trade association of property casualty insurers; **John Metropolis, National Association of Independent Insurers and Farmers Insurance Group; Greg Van Horsen, State Farm Insurance Company.** They, who had worked on the bill were appreciative for the effort of the department. Montana did have stronger privacy protection in law by virtue of the constitution and that was unique in the United States. They wanted to support that policy but it had been a challenge to find methods of operation or methods of stating the compliance requirements in a way that their operations were in compliance in all 50 states. They worked with the department and believed they had agreed on how to go forward together to honor the privacy policy of Montana and still operate their businesses in a way that was necessary. It appeared that there was an oversight in the problem. She said the sponsor was aware of it and they had a brief conversation with **Mr. Bohyer** about the problem who had spoken to **Mr. Petesch** about it. **Mr. Petesch** suggested the administrative method of correcting the title problem and they urged the committee to give the bill a Do Concur recommendation and they strongly resisted any attempt to amend the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. FRANKLIN said the bill represented much work and she appreciated how all parties worked hard together to come to a compromise.

HEARING ON HB 384

Sponsor: REP. JOE MCKENNEY, HD 49, Great Falls

STATE AUDITOR'S OFFICE
Privacy
HB 205
Rep. Eve Franklin

Background
The 2001 Legislature amended the Insurance Information and Privacy Protection Act to comply with federal privacy requirements found in the Gramm-Leach-Bliley Act [GLBA]. The 2001 amendments preserved and strengthened Montana's existing privacy requirements, thereby maintaining stronger consumer privacy protections than federal law requires. Montana's Insurance Information and Privacy Protection Act applies only to entities licensed by the Montana Insurance Department. Montana law differs from GLBA in that GLBA allows insurance companies to share nearly all of an individual's personal financial information, unless the individual specifically requests that it not be shared.

Purpose
This bill corrects technical errors in the law and makes it more workable for companies.

Details

- In April 2003, the federal Health Insurance Portability and Accountability Act (HIPAA) will go into effect. HB 205 creates an exemption in Montana law for health insurance companies that are required to comply with HIPAA. HIPAA privacy requirements are extensive, and, in some cases, more protective than Montana law. Because compliance with both federal and state law would be complex and costly for health insurers, we have exempted them from Montana law, except in instances where Montana law is more protective of consumers.

- A sunset provision for the exemption is included in HB 205, allowing this agency to make certain that federal privacy regulations are enforced, that federal regulators are responsive to consumer complaints and that the health information of Montana consumers is fully protected.

- HB 205 makes it clear that if an insurance company uses more than one notice form, any national notice form must conspicuously refer to the state-specific notice form.

- This bill makes the tracking requirement for medical record disclosures more workable for industry.

- HB 205 allows companies to disclose information more freely for the purposes of fraud prevention and detection

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE 3-24-03
BILL NO. HB 205

ROLL CALL

SENATE COMMITTEE: **PUBLIC HEALTH, WELFARE, & SAFETY** DATE: 3.24.03

NAME	PRESENT	ABSENT	EXCUSED
Jerry O'Neil - Chair (R)	X		
Duane Grimes - Vice Chair (R)	X		
Bob DePratu (R)	X		
John C Bohlinger (R)	X		
Brent R Cromley (D)	X		
John Esp (R)	X		
Dan Harrington (D)	X		
Trudi Schmidt (D)	X		
Emily Stonington (D)	X		

*Attach to each day's minutes

DATE 3. 24. 2003

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB205, HB 384
HB695

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
LARRY E. RILEY	523-2500	SELF	HB695		X
Craig Dove	387-8677	Self	HB695		X
Al Smith	443-3124	MTLA	HB695		X
Jami McCall	676-3084	DBC	695 384	X	
Colleen Senterfitt	457 2225	NewWest	384	X	
Denise Pizzini	457-2241	Montana Benefits + Health Com. NewWest Health	384 205	X X	
Robert Stahl	442-3307	Physician	384		
Carol Clifford	444-4613	State Auditor	384	X	
Joe Mazurek	449-4165	BCBSMT	205	X	
Jill Gardner	444-3152	SAO	205	X	
Faye Haack	444-9297	BCBSMT	384 205	←	
John Wilson	2386888	Self - Physician	HB695	X	
Frederick Cole	2386800	RMHN	HB695	X	
Joe Erpelding	2386540	MT ORTHO SOC.	HB695	X	
Tom Courtney	2386540	Self - physician	HB 695	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Riley Johnson	443-3797	NFIB	HB 384 X
Aidan Nyhte		Mt. Chamber	HB 384 X
Frank Cote'		MHA	HB 205, 384 support

DATE Public Health 3-24-03

SENATE COMMITTEE ON

BILLS BEING HEARD TODAY: HB205, HB 384, HB695

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike Foster	896-82274	MT Ortho Society	695		
LANCE PARKS, MD	248-2582	PRACTICING ANESTHESIOLOGISTS	HB695	X	
Dan Roberts					
Mason Good	439-8785	MD to Surgical Specialties	695	X	
Mona Jamison	442-5581	Doctors' Company	695	X	
MARK TAYLOR	443-6820	Mont Hospital Assoc.	695	X	
Mike Foster	237-3038	SVH, SJH, HRH	695	X	
Margaret Morgan	431-9836	Independent Elec Contractors	384	X	
Pat Malloy	442-7480	MT Med Assn	695	V	
Jan Brunson	444-3111	Gov's Office	HB384	V	
FRANK CATE	3-9070	MTAIA	205	X	
Keith Colbo	443-1673	Primary Care Assn	HB384	X	
MARY C. ALLEN	442-7531	MTAIFA	HB384	X	
ROGER McGlenn FOR		11AM	HB384	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3.24.03

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB205, HB384, HB695

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Jacqueline Lenmark	2-0230	Am Coal Life Assn Am Ins Assn	205	X	
Greg Van Lorsen	"	State Farm	205	X	
Jon Metropoulos/INT	2-8560	Farmers; NAII	205	X	
Sue Weingartner/INT		Alliance	205	X	
MARY C. ALLEN	3-7531	MTAIFA	205	X	
-FOR- ROGER McCLEAN		11AM	205	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 26, 2003 at 3:43 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Trudi Schmidt (D)

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 734, 3/10/2003; HB 698, 3/17/2003; HB 524, 3/10/2003
Executive Action:	HB 524; HB 90; HB 698; HB 384; HB 205; HB 484; HB 464

be inserted, "if not previously dismissed, the court shall dismiss..." **Ms. Brown** thought it was a good idea.

SEN. GRIMES said to treat that as a concept amendment to give **Mr. Bohyer** some latitude, but thought the intent there was clear.

SEN. ROBERT DEPRATU, SD 40, Whitefish, said he had a note regarding that as well and was comfortable with **SEN. CROMLEY'S** amendment.

Motion/Vote: **SEN. CROMLEY moved that SEN. CROMLEY'S AMENDMENT BE ADOPTED. Motion carried 7-0 with SEN. ESP, SEN. HARRINGTON, and SEN. O'NEIL voting by PROXY.**

Motion/Vote: **SEN. CROMLEY moved that HB 90 BE CONCURRED IN AS AMENDED. Motion carried 7-0 with SEN. ESP, SEN. HARRINGTON, and SEN. O'NEIL voting by PROXY.**

EXECUTIVE ACTION ON HB 698

Discussion:

Mr. Bohyer said that **SEN. ESP** was interested in an amendment on Page 4, Lines 4 and 8, following "county treasurer," insert "to the department of revenue."

Motion/Vote: **SEN. CROMLEY moved that SEN. ESP'S AMENDMENT BE ADOPTED. Motion carried 7-0 with SEN. ESP, SEN. HARRINGTON, and SEN. O'NEIL voting by PROXY.**

Motion/Vote: **SEN. GRIMES moved that HB 698 BE CONCURRED IN AS AMENDED. Motion carried 7-0 with SEN. ESP, SEN. HARRINGTON, and SEN. O'NEIL voting by PROXY.**

EXECUTIVE ACTION ON HB 384

Motion/Vote: **SEN. DEPRATU moved that HB 384 BE CONCURRED IN. Motion carried 7-0 with SEN. ESP and SEN. O'NEIL voting by PROXY.**

EXECUTIVE ACTION ON HB 205

Motion/Vote: **SEN. DEPRATU moved that HB 205 BE CONCURRED IN. Motion carried 7-0 with SEN. ESP and SEN. O'NEIL voting by PROXY.**

EXECUTIVE ACTION ON HB 484

Motion: **SEN. DEPRATU moved that HB 484 BE CONCURRED IN.**

Discussion:

ROLL CALL

SENATE COMMITTEE: **PUBLIC HEALTH, WELFARE, & SAFETY** DATE: 3-26-03

NAME	PRESENT	ABSENT	EXCUSED
Jerry O'Neil - Chair (R)	X		
Duane Grimes - Vice Chair (R)	X		
Bob DePratu (R)	X		
John C Bohlinger (R)	X		
Brent R Cromley (D)	X		
John Esp (R)	X		
Dan Harrington (D)	X		
Trudi Schmidt (D)			
Emily Stonington (D)	X		

*Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Public Health, Welfare and Safety** recommend that **House Bill 205** (third reading copy -- blue) **be concurred in.**

Signed: *Senator Jerry O'Neil, Chair*

To be carried by Senator Emily Stonington

- END -

Committee Vote:
Yes 7, No 0.

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MONTANA SENATE
2003 LEGISLATURE
PUBLIC HEALTH, WELFARE, & SAFETY COMMITTEE
ROLL CALL VOTE

DATE 3.26.03 BILL # HB 205 AMENDMENT # (E)

MOTION: _____

Sen. Stonington will carry it.

NAME	AYE	NAY
Sen. Bob Depratu	X	
Sen. John C Bohlinger	X	
Sen. Brent R Cromley	X	
Sen. John Esp	X proxy	
Sen. Dan Harrington	X proxy	
Sen. Trudi Schmidt		
Sen. Emily Stonington		
Sen. Duane Grimes, Vice Chairman	X	
Sen. Jerry O'Neil, Chairman	X proxy	

7-0